must be reasonably safe for the purpose of such labor, so far as freedom from concealed dangers is concerned. *Sesler* v. *Rolfe Coal & Coke Co.*, 51 W. Va. 318, 41 S. E. 216; *Mayhew* v. *Sullivan Mining Co.*, 76 Me. 100. See note, 26 L. R. A., p. 524. This duty of exercising ordinary or reasonable care for the safety of an independent contractor results from the view that he is on the premises in pursuance of the invitation of the proprietor. 1 THOMPSON, NEGLIGENCE, Ed. 2, §§ 680, 979. For the same reason, if the contractor brings third persons, his own employes, his partners or assistants, to assist him in executing the contract, such persons are presumably upon the premises by the invitation of the owner and he owes to them the same measure of care that he owes to the contractor himself. *Dougherty* v. *D. C. Weeks & Son*, 111 N. Y. Supp. 218; *Dallas Mfg. Co.* v. *Townes*, 148 Ala. 146, 41 South. 988; *John Spry Lumber Co.* v. *Duggan*, 182 Ill. 218, 54 N. E. 1002.

POLICE POWER—THEATERS—REGULATION BY CITY.—Under an ordinance of the City of Chicago requiring all persons conducting theaters to employ a fireman, to be detailed by the fire marshal of the city, from the regular city fire department, and to pay for the services so rendered, an action was brought by the city to recover for the services of a fireman, *Held*, Chicago Charter, Art. 5, § 63, empowering the city to license or prohibit theaters, etc., to regulate places of amusement, the police of the city, and enforce all necessary police ordinances, and to determine what shall be a nuisance, and to abate the same, does not authorize an ordinance requiring persons conducting theaters, to employ a fireman to be detailed by the fire marshal from the regular city fire department, and to pay for the services so rendered. *City of Chicago* v. *Weber* (1910), — Ill. —, 92 N. E. 859.

The principal case is one of first instance in the State of Illinois, and the point involved seems to have been passed upon by the courts of but two other states, the respective decisions being in direct conflict. In accord with the holding above is *Waters* v. *Leech*, 3 Ark. 110, which was an action by a constable against the manager of a theater for services rendered, the charter of the city and the ordinance passed thereunder being similar to the provisions in the principal case. Contra: *Tannenbaum* v. *Rehm*, 152 Ala. 494, 44 South. 532, 11 L. R. A. (N. S.) 700, 126 Am. St. Rep. 52, holding that § 20 of the charter of the City of Mobile, giving the municipality the right to exercise full police powers, protect the rights of persons and property, regulate theaters, etc., empowers the city to pass an ordinance requiring theaters to pay for the services of a fireman or policeman, performed at the theater or place of exhibition. The question as to how far a municipality may go under its police power is a difficult one, and both decisions are supported by good reasoning. The Illinois court bases its holding on the ground that a municipal corporation is a government of delegated powers; that it possesses first, only such powers as are expressly granted, second, those necessary or fairly implied as incidental to the powers expressly granted, and third, those essential to the declared objects and purposes of the corporation, not including those merely convenient, *Chicago* v. *Blair*, 149 Ill. 310, 36 N. E.

829, 24 L. R. A. 412. That the power in question is not one coming within the above mentioned classification and that the City of Chicago therefore had no authority to pass such an ordinance, see *Chicago* v. *O'Brien,* 111 Ill. 532, 53 Am. Rep. 640. The Tennessee court substantiates its decision by saying that the ordinance comes within the police power of the municipality, and that it was not unreasonable. The case is weakened by the fact that the only two authorities cited by the court in support of its position, are not in point.

TELEGRAPHS AND TELEPHONES — DELAY IN DELIVERY OF MESSAGE — CONFLICT OF LAWS.—A message was received by the Western Union Telegraph Company in Alabama for transmission to a point in Texas. In an action brought in the latter state to recover damages for mental anguish resulting from failure to make prompt delivery, *Held,* when, a message is received by a telegraph company in one state, for transmission to a point in another state, the law of the former state controls as to the liability of the company for failure to promptly transmit and deliver the message. *Western Union Telegraph Co.* v. *Young* (1911), — Tex. Civ. App. —, 133 S. W. 512.

The principal case undoubtedly expresses the weight of authority. 7 AM. & ENG. ANN. CAS. 1065, although there is a direct conflict. Note: 63 L. R. A. 513, 532; 1 WHARTON, CONFLICT OF LAWS, 1082-1083. The Texas courts at one time adhered to the opposite doctrine, apparently taking the view that performance consisted solely of the delivery of the message, and they consequently applied the law of Texas, allowing a recovery for mental anguish, notwithstanding that the telegram was sent from Arkansas to a point in Texas. *W. U. Tel. Co.* v. *Blake,* 29 Tex. Civ. App. 224, 68 S. W. 526. But this view has since been repudiated as is seen by the principal case. Also see *W. U. Tel. Co.* v. *Sloss,* 45 Tex. Civ. App. 153, 100 S. W. 354. In accordance with the rule that the lex loci contractus governs are the following decisions: *Reed* v. *Western Tel. Co.,* 135 Mo. 661, 34 L. R. A. 492; *Shaw* v. *Postal Tel. Co.,* 79 Miss. 670, 56 L. R. A. 486; *Bryan* v. *W. U. Tel. Co.,* 133 N. C. 603, 45 S. E. 938. Recently decided cases also adopt this view. *W. U. Tel. Co.* v. *Griffin,* — Ark. —, 122 S. W. 489; *Heath* v. *Postal Tel. Co.,* — S. C. —, 69 S. E. 283. The difference of opinion with respect to the law which governs contracts of the kind under consideration is in a large measure attributable to a difference of views as to the place of performance of such contracts. The authorities adopting the view expressed in *W. U. Tel. Co.* v. *Blake,* supra, define the place of performance as the place of delivery. *W. U. Tel. Co.* v. *Lacer,* 29 Ky. Law Rep. 379, 5. L. R. A. (N. S.) 751; *North Packing & Provision Co.* v. *W. U. Tel. Co.,* 70 Ill. App. 275. Some of the courts draw distinctions between actions ex delicto and actions ex contracto, allowing a recovery in the former case and denying it in the latter. In accord with this view the courts of South Carolina have permitted a recovery for mental anguish, although the telegram was sent from a point in Virginia, the laws of which state denied the right to damages for mental anguish alone, to a point in South Carolina, the delay complained of having occurred in South Carolina; the decision being based on